

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	Billed Entity Number 143262
)	Funding Year 2011
Requests for Review of)	Form 471 Application No. 775450
Decisions of the)	Funding Request Nos. 2102447 and
Universal Service Administrator by)	2102470
Bloomfield School District)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	

ATT: Telecommunications Access Policy Division
Wireline Competition Bureau

APPEAL AND REQUEST FOR REVIEW

The Board of Education of the Bloomfield Public School District, Bloomfield, New Mexico (“School District”) requests the Federal Communications Commission (“Commission”) to review the Universal Service Administrative Company’s (“USAC”) Funding Commitment Decision Letter, dated December 5, 2012, denying funding for Form 471 Application No. 775450, Funding Request Nos. 2102447 and 2102470. *See Exhibit A.* As grounds therefore, the School District states the following:

Background

1. On June 12, 2009, USAC notified the School District that its service provider, Trillion Partners, Inc. (“Trillion”) was named as one of several defendants in a complaint brought by the State of Arizona alleging antitrust, bid rigging, procurement fraud, and conflict of interest violations of Arizona law. The complaint alleged that, among other things, Trillion,

which had submitted a bid related to the Tucson Unified School District (“TUSD”) E-rate program applications, obtained inside information from TUSD’s E-rate program consultant and provided gifts and gratuities to TUSD administrative employees involved in the procurement process. Trillion and TUSD settled the case and entered into consent judgments with Arizona.

2. Apparently, the TUSD matter raised concerns by USAC as to whether *other* funding requests associated with Trillion were noncompliant, and caused USAC to request information from the School District to determine whether it was in compliance with Commission rules governing the E-rate program.

3. On June 2, 2010, USAC notified the School District that it was in the process of reviewing the School District’s funding requests with Trillion to ensure that they were in compliance with USAC rules. USAC identified e-mail correspondence between the School District and Trillion which predated the filing of Form 470 that USAC felt may have affected the existence of a fair and competitive bidding process.

4. On September 9, 2010, the School District responded to USAC, explaining the problems with Wide Area Network services in underserved rural areas of New Mexico, its lack of pertinent technical expertise, and its search for alternatives through contact with a technology vendor, Trillion. The School District also discussed the receipts for meals and travel that USAC claimed demonstrated violations of the Commission’s procurement rules.

5. On February 23, 2012, the Commission denied all then pending appeals.¹ In that February 23, 2012 Order, the Commission noted that, while USAC had denied the School District funding requests due to receipt of gifts, the Commission itself decided that the School

¹ On December 13, 2010 and February 2, 2011, Trillion also filed appeals with the Commission of USAC’s decisions denying the District’s applications and rescinding its funding commitments for funding years 2006 through 2010.

District violated the Commission's competitive bidding rules by engaging in improper communications with Trillion.²

6. Petitions for reconsideration of the Order—and thus the fate of the School District's funding for funding years 2006 through 2010—are still pending. All years at issue stem from the original Form 471 Application No. 775450 and the same competitive bidding process.

Request for Review

1. Apparently, now the fate of the School District's funding for funding year 2011, also stemming from the original Form 471 Application No. 775450 and the same competitive bidding process, has been added to the list of questioned funding procedures.

2. On December 5, 2012, USAC issued Funding Commitment Decision Letter, denying funding for Form 471 Application No. 775450, Funding Request Nos. 2102447 and 2102470.

3. In its Funding Decision Commitment explanation, USAC states that, "consistent with FCC Order DA 12-260, the FCC has determined that your competitive bidding process was flawed due to improper service provider involvement in the competitive bidding process that lead to the contract. Therefore funding is denied."

4. The School District acknowledges that the Commission has established a fair and open bidding or proposal process as a means to prevent waste, fraud, and abuse of federal program resources. *Schools and Libraries Universal Service Support Mechanism*, Third Report

² The Commission's February 23, 2012 decision focused on the e-mail correspondence referenced above, and not the meals or other gratuities. The School District perceives that this results from the Commission's Order DA-11-1854, issued after the USAC Notification of Commitment Adjustment Letter, but before the Commission decision in this case. In Order DA-11-1854, dated November 4, 2011, the Commission found that the gifts at issue did not, by themselves, compromise the competitive bidding process because they were minimal or given to employees who had no authority to influence the bidding process.

and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 02-6, 18 FCC Rcd 26912, 26939, para. 66.

5. The Commission rules provide further that, when a FCC Form 470 contact person influences an applicant's competitive bidding or proposal process by controlling the dissemination of information regarding the services requested and, when an applicant delegates that power to an entity that also participates in the bidding or proposal process as a prospective service provider, the applicant impairs its ability to hold a fair and competitive bidding process. *Request for Review of Mastermind Internet Services, Inc. Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028.

6. Under the Commission rules, all potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process. *Request for Review of Mastermind Internet Services, Inc. Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 96-45, Order, 16 FCC Rcd 4033, para. 10.

7. 47 C.F.R. § 54.5039(a) presents the Commission's competitive bidding requirements. This subsection states that "all entities participating in the schools and libraries universal service support program must conduct a fair and open competitive bidding process."

8. That Section of the Code also identifies activities or behaviors that would not result in a fair and open competitive bidding or procurement process:

- a. The applicant for supported services has a relationship with a service provider that would unfairly influence the outcome of a competition or would furnish the service provider with inside information;

- b. Someone other than the applicant or an authorized representative of the applicant prepares, signs, and submits the FCC Form 470 and certification;
- c. A service provider representative is listed as the FCC Form 470 contact person and allows that service provider to participate in the competitive bidding process;
- d. The service provider prepares the applicant's FCC Form 470 or participates in the bid evaluation or vendor selection process in any way;
- e. The applicant turns over to a service provider the responsibility for ensuring a fair and open competitive bidding process;
- f. An applicant employee with a role in the service provider selection process also has an ownership interest in the service provider seeking to participate in the competitive bidding process; and
- g. The applicant's FCC Form 470 does not describe the supported services with sufficient specificity to enable interested service providers to submit responsive bids.

9. USAC guidance provides further clarification:

The competitive bidding process must be fair and open. “Fair” means that all bidders are treated the same and that no bidder has advance knowledge of the project information. “Open” means that there are no secrets in the process, such as information shared with one bidder but not with others, and all bidders know what is required of them. The [FCC] Form 470 or the RFP should be clear about what products, services, and quantities the applicant is seeking. In order to be sure that a fair and open competition is achieved, any marketing discussions held with service providers must be neutral, so as not to taint the competitive bidding process. That is, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with “inside” information or allow it to unfairly compete in any way. See <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>.

10. The School District acknowledges all the rules, guidance, and procedures but respectfully denies that it engaged in any activities that would result in an unfair and noncompetitive bidding or procurement process. The communications between School District

employees and Trillion were neutral and did not taint the bidding process. *See* Exhibit B, Affidavit of Sondra Adams. Neither did the discussions unfairly influence the outcome of the competition for E-rate services. *Id.* The School District did not furnish Trillion with any inside information which was not available to or shared with other prospective vendors, or allow it to unfairly compete in any way. *Id.*

11. The School District is located in an underserved area of New Mexico and has very limited options for obtaining networking services and Internet access. *Id.* To resolve its problems presented by its then current inadequate and malfunctioning Wide Area Network, the School District in 2005 began investigating options for networking services and Internet access, and identified Wireless Wide Area Networking as a possible solution. Rather than using limited School District resources on network engineering services, the School District sought the outside assistance of Trillion for its technical expertise only. Use of technical expertise was permissible under New Mexico procurement law and did not taint the competitive bidding process or slant the selection in favor of any proposed vendors.

12. The decision to use Wireless Wide Area Network services was solely the School District's decision.

13. Trillion did not prepare, sign, or submit the School District's Form 470 and certification. *Id.* This form was prepared and submitted by the School District and its E-rate consultant, eRate 360 Solutions, LLC.

14. Trillion did not participate in the bid evaluation or vendor selection process in any way. *Id.*

15. On January 10, 2006, the School District published a solicitation for public bids or proposals through Form 470 for Wireless Wide Area Network data and voice services.

Several bidders called the School District to inquire about the services required and all available information was furnished to such prospective vendors prior to the bidding deadline. However, the School District received only one bid at the closing of the bid time frame. *Id.* The vendor was Trillion. The School District evaluated its bid response to ensure that it included all of the services and functionality the School District needed. Trillion was awarded the contract by public action of the School District Board of Education. *Id.* There were no protests filed to this proposal process as allowed by the New Mexico Procurement Code, and the protest procedure summarized in the bid package.

16. The School District fully complied with the 28-day waiting period, during which every Wireless Wide Area Network vendor in the country had an opportunity to bid on the School District's Wireless Wide Area Network services.

17. Trillion's proposal for installing a Wireless Area Network met the School District's requirements, was cost effective, and was within the School District's budgeted funds. *Id.* The contract to Trillion was awarded in accordance with USAC requirements.

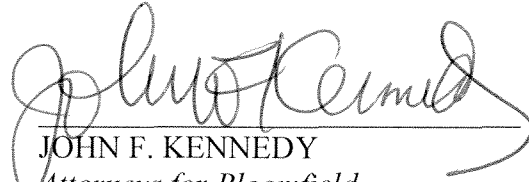
18. The School District provided all potential bidders access to the same information and treated them in the same manner throughout the procurement process. *Id.*

19. As demonstrated above (and as argued in prior petitions for reconsideration), USAC has erred in concluding that there was a violation of the Commission's competitive bidding rules.

WHEREFORE, the School District respectfully requests the Commission grant the School District's appeal and request for review of USAC's Funding Commitment Decision Letter, dated December 5, 2012, denying funding for Form 471 Application No. 775450, Funding Request Nos. 2102447 and 2102470.

Dated February 4, 2013

CUDDY & MCCARTHY, LLP



JOHN F. KENNEDY
*Attorneys for Bloomfield
Public School District*



Schools and Libraries Division

FUNDING COMMITMENT DECISION LETTER
(Funding Year 2011: 07/01/2011 - 06/30/2012)

December 5, 2012

Virginia Bryant
Trillion Partners, Inc
9208 Waterford Center Blvd.
Suite 150
Austin, TX 78758

Re: Service Provider Name: Trillion Partners, Inc
Service Provider Identification Number: 143025872

Thank you for participating in the Schools and Libraries Program (Program) for Funding Year 2011. This letter is your notification of our decision(s) regarding application funding requests that listed your company's Service Provider Identification Number (SPIN).

NEXT STEPS

- File Form 498, Service Provider Information Form, if appropriate
- File Form 473, Service Provider Annual Certification Form (SPAC), for the above Funding Year
- Work with your customer to provide appropriate invoicing to USAC: Service Provider Invoice (Form 474) or Billed Entity Applicant Reimbursement (Form 472)

Please refer to the Funding Commitment Report(s) (Report) following this letter for specific funding request decisions and explanations. Each Report contains detailed information extracted from the applicant's Form 471. A guide that provides a definition for each line of the Report is available in the Reference Area of our website.

Once you have reviewed this letter, we urge you to contact your customers to establish any necessary arrangements regarding start of services, billing of discounts, and any other administrative details for implementation of discount services. As a reminder, only eligible services delivered in accordance with Federal Communications Commission (FCC) rules are eligible for these discounts.

TO APPEAL THIS DECISION:

You have the option of filing an appeal with the SLD or directly with the FCC.

If you wish to appeal a decision in this letter to USAC, your appeal must be received by USAC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and (if available) email address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the decision letter and the decision you are appealing:
 - Appellant name,
 - Applicant or service provider name, if different from appellant,
 - Applicant Billed Entity Number (BEN) and Service Provider Identification Number (SPIN),
 - Form 471 Application Number as assigned by USAC,
 - "Funding Commitment Decision Letter for Funding Year 2011," AND
 - The exact text or the decision that you are appealing.

Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-0685
Visit us online at: www.usac.org/sl

3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
4. If you are the applicant, please provide a copy of your appeal to the service provider(s) affected by the decision. If you are the service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email to appeals@sl.universalservice.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

OBLIGATION TO PAY NON-DISCOUNT PORTION

Applicants are required to pay the non-discount portion of the cost of the products and/or services to their service provider(s). Service providers are required to bill applicants for the non-discount portion. The FCC stated that requiring applicants to pay their share ensures efficiency and accountability in the program. If USAC is being billed via the FCC Form 474, the service provider must bill the applicant at the same time it bills USAC. If USAC is being billed via the FCC Form 472, the applicant pays the service provider in full (the non-discount plus discount portion) and then seeks reimbursement from USAC. If you are using a trade-in as part of your non-discount portion, please refer to our website for more information.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with all such requirements. USAC may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by USAC, the applicant, or the service provider. USAC, and other appropriate authorities (including but not limited to the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

Schools and Libraries Division
Universal Service Administrative Company

FUNDING COMMITMENT REPORT
Service Provider Name: Trillion Partners, Inc
SPIN: 143025872
Funding Year: 2011



Name of Billed Entity: BLOOMFIELD SCHOOL DISTRICT
Billed Entity Address: 325 N BERGIN LN
Billed Entity City: BLOOMFIELD
Billed Entity State: NM
Billed Entity Zip Code: 87413-6729
Billed Entity Number: 143262
Contact Person's Name: Matthew Hetman
Preferred Mode of Contact: EMAIL
Contact Information: mhetman@erate360.com
Form 471 Application Number: 775450
Funding Request Number: 2102447
Funding Status: Not Funded
Category of Service: Telecommunications Service
Form 470 Application Number: 221250000552188
Contract Number: N/A
Billing Account Number: N/A
Service Start Date: 07/01/2011
Contract Expiration Date: 01/28/2012
Number of Months Recurring Service Provided in Funding Year: 7
Annual Pre-Discount Amount for Eligible Recurring Charges: \$163,415.21
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$.00
Pre-Discount Amount: \$163,415.21
Applicant's Discount Percentage Approved by SLD: 80%
Funding Commitment Decision: \$.00 - Bidding Violation- SRC
Funding Commitment Decision Explanation: <><><><><> DR 1: Consistent with FCC Order
DA 12-260, the FCC has determined that your competitive bidding process was flawed
due to improper service provider involvement in the competitive bidding process that
lead to this contract. Therefore, funding is denied.

FCDL Date: 12/05/2012

Wave Number: 071

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2013

Consultant Name: MATTHEW HETMAN
Consultant Number (CRN): 16048893
Consultant Employer: E-Rate 360 Solutions, LLC

FUNDING COMMITMENT REPORT
Service Provider Name: Trillion Partners, Inc
SPIN: 143025872
Funding Year: 2011

Name of Billed Entity: BLOOMFIELD SCHOOL DISTRICT
Billed Entity Address: 325 N BERGIN LN
Billed Entity City: BLOOMFIELD
Billed Entity State: NM
Billed Entity Zip Code: 87413-6729
Billed Entity Number: 143262
Contact Person's Name: Matthew Hetman
Preferred Mode of Contact: EMAIL
Contact Information: mhetman@erate360.com
Form 471 Application Number: 775450
Funding Request Number: 2102470
Funding Status: Not Funded
Category of Service: Internet Access
Form 470 Application Number: 221250000552188
Contract Number: N/A
Billing Account Number: N/A
Service Start Date: 07/01/2011
Contract Expiration Date: 01/28/2012
Number of Months Recurring Service Provided in Funding Year: 7
Annual Pre-Discount Amount for Eligible Recurring Charges: \$12,302.50
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$.00
Pre-Discount Amount: \$12,302.50
Applicant's Discount Percentage Approved by SLD: 80%
Funding Commitment Decision: \$.00 - Bidding Violation- SRC
Funding Commitment Decision Explanation: MR1: The amount of the funding request was changed from \$1757.50 monthly to \$1025.00 monthly to remove: ineligible primary firewall service for \$732.50 monthly. <><><><><> DR 1: Consistent with FCC Order DA 12-260, the FCC has determined that your competitive bidding process was flawed due to improper service provider involvement in the competitive bidding process that lead to this contract. Therefore, funding is denied.

FCDL Date: 12/05/2012

Wave Number: 071

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2013

Consultant Name: MATTHEW HETMAN

Consultant Number (CRN): 16048893

Consultant Employer: E-Rate 360 Solutions, LLC

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

5. I further understand that the Commission found that the School District violated the Commission's competitive bidding violations by engaging in improper communications with Trillion and denied the School District's request for a review of USAC's decision.

6. In denying the School District's funding under the E-rate program, USAC pointed to e-mail correspondence between the School District and Trillion that occurred before the School District filed its Form 470. USAC contends that the e-mail exchanges suggest the School District intended to select Trillion for the contract for services without a fair and open competition.

7. The references to e-mail exchanges are to my discussions with Trillion. The School District is located in an underserved area of New Mexico and has very limited options on networking services and Internet access. To resolve its problems presented by its current inadequate and malfunctioning Wide Area Network, I started looking into options for networking services and Internet access, and identified Wireless Wide Area Networking as a possible solution. Rather than using limited School District resources on network engineering services, I sought the outside assistance of Trillion for its technical expertise only. My discussions with Trillion are summarized as follows.

8. On July 19, 2005, at 3:25 PM, I received an e-mail from Gary Gaessler, Regional Sales Manager with Trillion. He asked me some questions regarding site locations, T1 connections, and fiber location and distance. He also discussed services, such as firewalls, content filtering, e-mail filtering, *etc.* This was a neutral conversation, by which Mr. Gaessler was discussing the types of services or products Trillion had to offer, in light of the School District's current technology needs so that I could determine what products or services may address the School District's technological infrastructure needs at the time.

9. On August 28, 2005, at 4:55 PM, I sent an e-mail to Mr. Gaessler, indicating that the School District planned to work with its E-rate consultant to get its Form 470 filed. I did ask for examples of language used in previous Form 470s and provided information about our current

technology system. I also agreed to meet with Trillion representatives to discuss their product offerings. However, I did not provide Trillion with any information that was not available to anyone else who would have been submitting a proposal for the services, and Trillion did not prepare, review, or complete the Form 470.

10. On August 30, 2005, at 11:15 AM, I received an e-mail from Gary Gaessler, Regional Sales Manager with Trillion. He provided me an example of a description for a Wireless Wide Area Network and Voice Service, which he read from USAC's Eligible Services List. He also suggested that the services could be provided on as multi-year basis or allow for voluntary extensions. Mr. Gaessler offered to review a Form 470, but we did not provide this to him, nor did we use his suggested language in the description of services published in Form 470 for solicitation of bids. Again, this was a neutral conversation and I provided no information to Mr. Gaessler that would affect the bidding processes.

11. On August 30, 2005, at 4:38 PM, I received an e-mail from Gary Gaessler, Regional Sales Manager with Trillion. He asked me whether any of the dates and times that he identified in the e-mail were available to meet with me, the School District's lead technician, and Trillion's IP Tel Engineer and project manager to discuss the School District's current LAN network, i.e., switching, equipment, models, hubs, QOS capabilities, *etc.* This was a neutral conversation, and he was gathering information to determine the scope and nature of the School District's current technology in use so that his bid would be responsive to the School District's needs. The same information was available to any vendor.

12. These communications between me and Trillion were neutral and did not taint the bidding process.

13. Neither did our discussions unfairly influence the outcome of the competitive procurement process for E-rate services.

14. I did not furnish Trillion with inside information or information of any kind which was not available to or shared with other interested vendors, or allow it to unfairly compete in any way.

15. On January 10, 2006, the School District went out to bid through Form 470 for Wireless Wide Area Network data and voice services. Several bidders called in to the School District to inquire about the services required, essentially seeking the same information sought by Trillion in ¶11, above. However, the School District received only one bid at the closing of the bid time frame. The vendor was Trillion. The School District evaluated its bid response to ensure that it included all of the services and functionality the School District needed. Trillion was awarded the contract.

16. Trillion met the School District's requirements, were cost effective, and were within budget.

17. The School District provided all potential bidders access to the same information and treated them in the same manner throughout the procurement process.

18. Trillion did not prepare, sign, or submit the School District's Form 470.

19. Trillion did not participate in the bid evaluation or vendor selection process in any way.

20. I provided all potential bidders access to the same information and treated them in the same manner throughout the procurement process.

Further, the Affiant states not.

Dated this 30th day of March 2012.

Sondra Adams
Sondra Adams

STATE OF NEW MEXICO)
)ss.:
COUNTY OF Santa Fe)

On this 30th day of March, 2012, before me appeared Sondra Adams to me personally known, who, being by me duly sworn, did say that she is former Director of Technology for the School District and that she executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

Stephanie M. Blea
NOTARY PUBLIC

My Commission Expires: April 14, 2012

